



CALIFORNIA FARM BUREAU FEDERATION
NATURAL RESOURCES AND ENVIRONMENTAL DEPARTMENT
2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

Sent via E-Mail

deltaplancomment@deltacouncil.ca.gov

March 11, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: **First Staff Draft Delta Plan**

Dear Council Members:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity to comment on the Delta Stewardship Council's ("Council") February 14, 2011 First Staff Draft Delta Plan ("First Draft Plan").

More Reliable Water Supply / Reduced Reliance

Since passage of the Delta Reform Act in 2009, the public debate has amply demonstrated that the somewhat ambiguous terms "more reliable water supply" and "reduced reliance" can mean very different things to different people. To square with the Act's co-equal goals, however, it should be fairly clear what these terms simply *cannot* mean: What they *cannot* mean is that water users, existing beneficial uses, and the State's economy come out of the Delta Plan *worse* than they went in. Thus, whatever else these terms mean, they simply *cannot* mean less than the Act's express purposes to "[m]anage the Delta's water and environmental resources and the water resources of the state over the long term,"¹ to "[i]mprove the water conveyance system and

¹ Water Code, § 85054, subd. (a)

expand statewide water storage,”² to “meet[] the needs for reasonable and beneficial uses of water,”³ and to “sustain[] the economic vitality of the state.”⁴

Even with aggressive conservation in all sectors, regional self-sufficiency measures, new sources of water and the like, because of climate change, increasing urban and environmental water demand, and population growth, California’s need for reliable fresh water from the Delta and its watershed will not decrease, but rather increase. In the 21st century, California will undoubtedly have no choice but to find new sources of water, while at the same time stretching its existing water supplies much further. Absent some presently inconceivable leap in technology within the next 100 years however—and perhaps even then—it is highly unlikely that California will *ever* reach a point when it can stop “relying” on the Delta as a critically important water supply.

Financing / Co-equal Goals

While the First Draft Plan does not include a Finance Plan Chapter, the Draft Plan very appropriately alludes in several places already to the Council’s (and the State of California’s) enormous challenge in the area of financing. With respect to finances, however, what should be at once comforting and sobering is the certainty that a Plan that cannot be financed is doomed to become the latest addition to the great dustbin of failed California water plans.

Another sobering certainty is that a Plan which does not adequately provide for the State’s present and future water needs is a Plan that will garner little support. Most importantly perhaps, it is a Plan for which local water agencies, water users, and taxpayers around the State will have little incentive to pay. This is relevant not only from a water supply standpoint, but also from the standpoint of the co-equal goals. Simply put, a Plan that fails to deliver real, palpable improvements in water supply reliability, both the short and long term, will very predictably fail to mobilize the political will and public and private resources necessary to make desired progress on the Delta ecosystem as well. The point is an important one, since it implies some practical limits on the volumes of flows and acres of restored floodplains and wetlands the Delta Plan may reasonably include, and still hope to encounter a public willingness to fund such improvements without some material benefit in return.

Reallocating Shortage ≠ More Reliable Supply

A third important point, with respect to water supply reliability and the co-equal goals, is that mere reallocation of shortage from one portion of the State to another, or from one sector to another, is *not* an acceptable solution to the State’s current water problems. If such a solution is proposed, it again takes scarce little clairvoyance to discern it will be very fiercely opposed by the new “losers” in such a scheme. The likely result will not be a coherent and orderly plan for the State to move ahead in the Delta, but rather years, if not decades, of paralyzing litigation. The Council must therefore take care to avoid proposing “solutions,” that would merely shift the brunt of the State’s current water supply reliability problems from one region, or from one sector of the economy to another.

² Water Code, § 85054, subd. (f).

³ Water Code, § 85054, subd. (f).

⁴ Water Code, § 85302, subd. (c).

SWRCB Flow Criteria / CDFG Flow Recommendations

The First Draft Plan appears to suggest that the “flow criteria” developed by the State Water Resources Control Board as a requirement of the 2009 Delta Reform Act⁵ may be “included or considered,”⁶ and potentially drawn upon by the Stewardship Council in establishing “policies and recommendations for performance measures and targets” for the Delta ecosystem.⁷ However, as the Water Board itself acknowledged in its Flow Criteria Report,⁸ these “flow criteria” focused solely on water for “public trust resources,” without any balancing of other beneficial uses of water whatsoever, as required by the California Supreme Court under *National Audubon Society v. SWRCB*, (1983) 33 Cal.3d 419.⁹ The Water Board’s flow criteria fail to consider other ecosystem stressors, upstream coldwater needs, habitat, conveyance, and numerous other factors relevant to protection of the State’s public trust resources. Moreover, section 85086 of the Water Code plainly states that these flow criteria were not to be considered “predecisional.”

As a metric for achievement of the co-equal goals, the Water Board’s flow criteria are quite inadequate to assist Stewardship Council with its charge, most obviously because they take no account whatsoever of the water supply reliability half of the State’s dual objectives in the Delta. For like reasons, the Department of Fish and Game’s “flow criteria and quantifiable biological objectives for aquatic and terrestrial species” under Water Code section 85084.5¹⁰ are similarly limited in terms of their ability to meaningfully “inform” the Delta Plan.

Even *arguendo* that the Water Board’s and the Fish and Game’s recommendations *were* appropriate for use in establishing performance measures or targets for the Delta ecosystem, however, all of this ignores the central point that the Stewardship Council, in fact, *has* no authority to set regulatory flow standards for the Delta. In contrast, “flow criteria, rates of diversion, and other operational criteria” from a final adopted and fully permitted Bay Delta Conservation Plan,¹¹ as well as any different or additional flow standards established by the State Water Board or the other regulatory agencies in the future, could indeed carry regulatory force. For the Stewardship Council to anticipate these regulatory processes now, however, can serve little purpose—except perhaps to confuse what is already an exceedingly difficult and confused state of affairs. And, of course, under no circumstances should any set of criteria reached in a non-regulatory process be allowed prejudice or improperly influence any subsequent regulatory process.

⁵ See Water Code section 85086, subd. (c)(1). See also Final Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem, Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009, State Water Resources Control Board, August 3, 2010 (“SWRCB Flow Criteria”) at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf.

⁶ First Draft Plan at 2-4.

⁷ *Id.* at 5-7, 6-6 and 6-7.

⁸ See, e.g., SWRCB Flow Criteria at 2.

⁹ See *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 778.

¹⁰ See Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta, California Department of Fish and Game, November 23, 2010 at http://www.dfg.ca.gov/water/water_rights_docs.html.

¹¹ Water Code, § 85320.

Reasonable Use / Waste

The Council's First Draft Plan speaks of reasonable use and prevention of waste as a potentially important means to provide the State a "more reliable water supply."¹² The reasonable use doctrine of California Constitution Article X, Section 2, however, applies not only to traditional consumptive uses of water, but to *all* uses of water, including instream uses of the State's water for the protection of fish and wildlife. As such, it is both inconsistent and ineffectual to demand ever increasing levels of efficiency of the state's urban and agricultural water users in the name of reliability, yet at the same time mandate ever increasing instream flows, without any controls or limits whatsoever on the reasonableness of such instream water use.

Scope of the Delta Plan / Limits on the Council's Authority

To an outside observer reading the Delta Plan and much of what is contemplated or mandated in the Delta Reform Act itself, it is fairly striking to note that the Council in fact lacks legal authority, not to mention sufficient staff, expertise, resources, and time to accomplish much of what it has been asked to do. Thus, while the Delta Plan is potentially a very important fulcrum point, it is by no means the *only*, much less a *sufficient* fulcrum point for all that is expected of it.

The point of this observation is not to suggest that this state of affairs should be remedied by extending to the Council even more power and authority than it already possesses. On the contrary, the Delta Reform Act of 2009 was itself a dizzying leap of a faith for an agency that, as yet, has no proven track record and which, until approximately a year ago, did not even exist. Nonetheless, it is important to recognize that, done properly, the Delta Plan can indeed be a critical linchpin for the rest of the State. The job of a linchpin, however, is only to hold a hub, the spokes, and the wheel together:

To achieve a truly durable statewide water solution, there remains an enormous amount of work to be done in countless areas outside of the Council's sphere of direct authority. A wise plan can do much to guide and catalyze necessary efforts elsewhere in the State. In fact, a Delta Plan that does just this, while serving the co-equal goals in a balanced and equitable manner, is the maximum success the Council might hope for. Just such a plan should be the Council highest aspiration.

Protecting and Enhancing the Delta As an Evolving Place

As stated in a previous letter already in the Council's possession, by far the most effective (and, in fact, the *only*) way to protect and enhance the Delta's predominantly agricultural economy is to extend long-term protection to the basic building blocks of that economy—without which that economy would be seriously impaired. Those building blocks are (1) appropriate investment in necessary flood infrastructure, (2) an adequate and generally intact land base, and (3) an adequate supply of appropriately timed fresh water for the production of agricultural crops within the region. Without long-term protection of these basic ingredients of the Delta's economy, Heritage Area designations, attractive signage, and other such feeble efforts will be

¹² First Draft Staff Plan at 5-3.

completely irrelevant to the fate of the Delta. In fact, even a robust “Economic Sustainability Plan,” or a multi-million-dollar “Delta Investment Fund” will be quite inadequate to “protect and enhance the Delta as an evolving place” without strong measures to ensure the persistence of these basic constituents of the Delta’s regional culture, inhabitants, and economy.

Interests in other areas of the state may see little advantage in extending robust protection to the Delta, its economy, and its residents. This view, however, underestimates the difficulty of what is being proposed in the Delta—and the fact that, if it is to occur at all, what is being proposed must occur on Delta soil, along Delta waterways, over the strong objections of many persons living, working, and having their livelihoods and personal histories in the Delta. This is a very real, important, and legitimate piece of the complex Delta puzzle—and, therefore, one which must not be overlooked.

Conclusion

Farm Bureau again thanks the Delta Stewardship Council for the opportunity to comment on the Stewardship Council’s First Staff Draft Delta Plan. We look forward to Council’s subsequent iterations of what we sincerely hope will emerge in November as a balanced, well developed, and useful Final Delta Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin E. Fredrickson", with a long horizontal line extending to the right.

Justin E. Fredrickson
Environmental Policy Analyst

JEF